

# HOUSE BILL 543

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By: **Delegates Hough, Afzali, Cluster, Eckardt, Kach, Krebs, McComas, McDermott, Mitchell, Ready, Simmons, Smigiel, and Waldstreicher**

Introduced and read first time: February 3, 2012

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure – Victim–Offender Mediation Program**

3 FOR the purpose of authorizing the establishment of a pretrial victim–offender  
4 mediation program by the Chief Judge of the District Court; requiring the Chief  
5 Judge of the District Court to establish procedures to implement a certain  
6 victim–offender mediation program; establishing the manner in which a certain  
7 defendant can be diverted to a certain victim–offender mediation program;  
8 providing that a certain defendant under certain circumstances is eligible for  
9 diversion to a certain victim–offender mediation program; authorizing a court,  
10 under certain circumstances, to enter a certain order; providing for certain  
11 procedures; establishing the requirements that may be included in a certain  
12 mediation agreement in a certain victim–offender mediation program; providing  
13 for the period for and conditions under which a certain mediation agreement is  
14 valid; providing for the dismissal of certain charges under certain  
15 circumstances; requiring the Chief Judge of the District Court to establish a  
16 certain fee under certain circumstances; defining a certain term; and generally  
17 relating to a victim–offender mediation program.

18 BY adding to

19 Article – Criminal Procedure

20 Section 11–1101 through 11–1105 to be under the new subtitle “Subtitle 11.  
21 Victim–Offender Mediation Program”

22 Annotated Code of Maryland

23 (2008 Replacement Volume and 2011 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article – Criminal Procedure**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   **SUBTITLE 11. VICTIM–OFFENDER MEDIATION PROGRAM.**

2   **11–1101.**

3                   **IN THIS SUBTITLE, “ELIGIBLE DEFENDANT” MEANS A PERSON WHO:**

4                   **(1) IS CHARGED WITH A MISDEMEANOR THAT IS NOT AN ACT OF**  
5 **DOMESTIC VIOLENCE;**

6                   **(2) DOES NOT HAVE A PENDING FELONY CHARGE; AND**

7                   **(3) HAS NOT PREVIOUSLY BEEN CONVICTED OF A FELONY OR A**  
8 **MISDEMEANOR, OTHER THAN A MINOR TRAFFIC VIOLATION.**

9   **11–1102.**

10                   **(A) THE CHIEF JUDGE OF THE DISTRICT COURT MAY ESTABLISH A**  
11 **PRETRIAL VICTIM–OFFENDER MEDIATION PROGRAM.**

12                   **(B) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL ESTABLISH**  
13 **PROCEDURES TO IMPLEMENT THE VICTIM–OFFENDER MEDIATION PROGRAM**  
14 **UNDER THIS SUBTITLE.**

15   **11–1103.**

16                   **(A) AN ELIGIBLE DEFENDANT MAY FILE A PETITION TO HAVE THE**  
17 **CRIMINAL CASE IN WHICH THE DEFENDANT IS CHARGED DIVERTED FROM THE**  
18 **REGULAR CRIMINAL DOCKET TO THE VICTIM–OFFENDER MEDIATION PROGRAM.**

19                   **(B) THE STATE’S ATTORNEY MAY RECOMMEND TO THE COURT THAT AN**  
20 **ELIGIBLE DEFENDANT’S CASE BE DIVERTED FROM THE REGULAR CRIMINAL**  
21 **DOCKET TO THE VICTIM–OFFENDER MEDIATION PROGRAM.**

22                   **(C) THE COURT, BY ITS OWN MOTION, MAY DIVERT AN ELIGIBLE**  
23 **DEFENDANT’S CASE FROM THE REGULAR CRIMINAL DOCKET TO THE**  
24 **VICTIM–OFFENDER MEDIATION PROGRAM.**

25   **11–1104.**

26                   **(A) A COURT MAY DIVERT THE CASE OF AN ELIGIBLE DEFENDANT TO**  
27 **THE VICTIM–OFFENDER MEDIATION PROGRAM IF:**

1           **(1) AFTER BEING INFORMED OF THE PROGRAM, THE RIGHT TO**  
2 **RESTITUTION, AND THE ABILITY TO SEEK A NO CONTACT ORDER, THE VICTIM OR**  
3 **VICTIM’S REPRESENTATIVE CONSENTS TO PARTICIPATION IN THE**  
4 **VICTIM–OFFENDER MEDIATION PROGRAM; AND**

5           **(2) THE DEFENDANT:**

6                   **(I) AGREES TO A WAIVER OF SPEEDY TRIAL RIGHTS; AND**

7                   **(II) ENTERS INTO A BINDING MEDIATION AGREEMENT**  
8 **UNDER THIS SUBTITLE.**

9           **(B) A MEDIATION AGREEMENT SHALL BE:**

10                   **(1) SIGNED BY THE ELIGIBLE DEFENDANT AND THE VICTIM OR**  
11 **THE VICTIM’S REPRESENTATIVE; AND**

12                   **(2) RATIFIED BY THE STATE’S ATTORNEY IN A REQUEST FOR A**  
13 **COURT ORDER TO DOCUMENT AND APPROVE THE AGREEMENT.**

14           **(C) A MEDIATION AGREEMENT MAY REQUIRE:**

15                   **(1) TESTING, COUNSELING, AND TREATMENT OF THE DEFENDANT**  
16 **TO ADDRESS ALCOHOL OR DRUG ABUSE, MENTAL HEALTH, OR ANGER**  
17 **MANAGEMENT;**

18                   **(2) PAYMENT OF RESTITUTION TO THE VICTIM;**

19                   **(3) THE PERFORMANCE OF COMMUNITY SERVICE;**

20                   **(4) IF REQUESTED BY THE VICTIM OR THE VICTIM’S**  
21 **REPRESENTATIVE, A CONDITION OF NO CONTACT; AND**

22                   **(5) ANY OTHER CONDITION THAT IS REASONABLY RELATED TO**  
23 **THE OFFENSE FOR WHICH THE DEFENDANT IS CHARGED.**

24           **(D) UNLESS THE COURT APPROVES AN EXTENSION, A MEDIATION**  
25 **AGREEMENT IS VALID FOR NO MORE THAN 1 YEAR AFTER THE DATE ON WHICH**  
26 **THE MEDIATION AGREEMENT IS RATIFIED.**

27 **11-1105.**

1           **(A) ONCE AN ELIGIBLE DEFENDANT ENTERS A VICTIM-OFFENDER**  
2 **MEDIATION PROGRAM:**

3                 **(1) THE COURT MAY DEFER THE PROCEEDINGS BY MARKING THE**  
4 **CHARGE “STET” ON THE DOCKET; AND**

5                 **(2) EXCEPT IN A PROCEEDING CONCERNING THE MEANING OF A**  
6 **MEDIATION AGREEMENT, ALL COMMUNICATIONS MADE IN THE PROGRAM ARE**  
7 **CONFIDENTIAL AND MAY NOT BE INTRODUCED INTO EVIDENCE.**

8           **(B) IF AN ELIGIBLE DEFENDANT SATISFIES THE CONDITIONS OF THE**  
9 **MEDIATION AGREEMENT, THE STATE’S ATTORNEY SHALL DISMISS THE CHARGE**  
10 **BY ENTERING A NOLLE PROSEQUI.**

11           **(C) AN ELIGIBLE DEFENDANT’S CASE SHALL BE RETURNED TO THE**  
12 **DOCKET AND PROCEED THROUGH THE CRIMINAL JUSTICE SYSTEM IF:**

13                 **(1) THE VICTIM-OFFENDER MEDIATION DOES NOT RESULT IN A**  
14 **MEDIATION AGREEMENT; OR**

15                 **(2) THE DEFENDANT FAILS TO SATISFY THE TERMS OF THE**  
16 **MEDIATION AGREEMENT.**

17           **(D) IF AN ELIGIBLE DEFENDANT’S CASE IS RETURNED TO THE DOCKET**  
18 **UNDER SUBSECTION (C) OF THIS SECTION, THE DEFENDANT RETAINS THE**  
19 **RIGHTS THAT THE DEFENDANT POSSESSED BEFORE ENTERING THE**  
20 **VICTIM-OFFENDER MEDIATION PROGRAM.**

21           **(E) (1) IN ADDITION TO ANY OTHER FEES, FINES, OR COSTS, UNLESS**  
22 **THE COURT MAKES A FINDING ON THE RECORD THAT THE DEFENDANT IS**  
23 **UNABLE BY REASON OF INDIGENCY TO PAY THE COSTS, A DEFENDANT WHO**  
24 **PARTICIPATES IN A VICTIM-OFFENDER MEDIATION PROGRAM SHALL PAY AN**  
25 **ADMINISTRATIVE FEE TO THE COURT.**

26                 **(2) THE CHIEF JUDGE OF THE DISTRICT COURT SHALL**  
27 **ESTABLISH AN ADMINISTRATIVE FEE FOR THE VICTIM-OFFENDER MEDIATION**  
28 **PROGRAM THAT IS SUFFICIENT TO COVER THE COSTS OF THE PROGRAM.**

29           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 2012.